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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CHEN, VICTORIA W

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

05/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/669,926	Applicant(s) BEAUPRE, JEAN M.	
	Examiner VICTORIA W. CHEN	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17, 20, 21 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-17, 20, 21, 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly submitted claims 28 and 29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

New claim 28 requires an ultrasonic blade having first, second and third portions with differing densities, while original independent claim 15 does not. Claim 15 requires differing cross-sectional areas of the first, second and third portions of the ultrasonic blade while claim 28 does not.

New claim 29 requires an ultrasonic blade having first, second and third portions with differing stiffness, while original independent claim 15 does not. Claim 15 requires differing cross-sectional areas of the first, second and third portions of the ultrasonic blade while claim 29 does not.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28 and 29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-17, 20, 21, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Haibel, Jr. et al. (US 6254623 B1).

Regarding claim 15, Haibel discloses an ultrasonic blade [96] having more than one-half wave segments [col. 4, ll. 64-66], comprising a first portion [50], a second portion [98] and a third portion [48 & 46] wherein the first portion comprises a first cross-sectional area, the second and third portions comprise a second cross-sectional area less than the first cross-sectional area [col. 5, ll. 29-32] and wherein the first portion comprises a distal end and a proximal end, the distal end connected to the second portion and the proximal end connected to the third portion [Fig. 1]. Haibel also discloses the third portion [48 & 46] defines a first anti-node [col. 4, ll. 60-62] and the second portion [98] defines a second anti-node [col. 5, ll. 44-47], which defines a one-half wave segment.

Regarding claim 16, Haibel discloses an ultrasonic surgical instrument comprising a housing [100], a tubular sheath [36] having a proximal end joined to the housing, an ultrasonic waveguide [96] having more than one-half wave segments [col. 4, ll. 64-66], having an end effector [98] extending distally of the distal end of the tubular sheath, the waveguide comprising a first portion [50], a second portion [98] and a third portion [48 & 46] wherein the first portion comprises a first cross-sectional area, the second and third portions comprise a second cross-sectional area less than the first cross-sectional area [col. 5, ll. 29-32] and wherein the first portion comprises a distal end and a proximal end, the distal end connected to the second portion and the proximal end connected to the third portion [Fig. 1]. Haibel also discloses the third portion [48 & 46] defines a first anti-node [col. 4, ll. 60-62] and the second portion [98] defines a second anti-node [col. 5, ll. 44-47], which defines a one-half wave segment.

Art Unit: 3739

Regarding claim 17, Haibel discloses a clamp arm [42] pivotally mounted on the distal end of the sheath [col. 5, ll. 55-56].

Regarding claim 20, Haibel discloses the first cross-sectional area is constant [col. 5, 37-38].

Regarding claim 21, Haibel discloses the second cross-section area [here interpreted as the cross-sectional area of 48] is constant [col. 5, ll. 28-29].

Regarding claim 30, Haibel discloses an ultrasonic surgical blade [96] having an ultrasonic blade [96] having more than one-half wave segments comprising a first portion [50], a second portion [98] and a third portion [48 & 46] wherein the first portion comprises a first cross-sectional area, the second and third portions each defining a length and comprising a variable cross-sectional area along each length [variable cross sectional area of the second portion can be see in Fig. 3, variable cross sectional area of the third portion can be seen in Fig. 1, change in diameter between elements 48 to 46] and wherein the first portion comprises a distal end and a proximal end, the distal end connected to the second portion and the proximal end connected to the third portion [Fig. 1]. Haibel also teaches the blade is capable of having more than one half wave segments [col. 4, ll. 64-66] and that the third portion [48 & 46] defines a first anti-node [col. 4, ll. 60-62] and the second portion [98] defines a second anti-node [col. 5, ll. 44-47], which defines a one-half wave segment.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3739

Due to the new amendments, a new interpretation of the Haibel, Jr. reference has been applied.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA W. CHEN whose telephone number is (571)272-3356. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victoria W Chen/
Examiner, Art Unit 3739

/Roy D. Gibson/
Primary Examiner, Art Unit 3739